UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
KYLE MAURICE PARKS,	)	No. S1 4:15 CR 553 JAR
a/k/a “REECE”,	)	
a/k/a “DAD”,	)	
a/k/a "DADDY,"	)	
	)	
Defendant.	)	

GOVERNMENT’S RESPONSE TO THE DEFENDANT’S OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

COMES NOW the United States of America, by and through its attorneys, Carrie Costantin, Acting United States Attorney for the Eastern District of Missouri, and Howard J. Marcus, Assistant United States Attorney for said District, and responds to the defendant’s objections to the Presentence Investigation Report as follows:

1. The defendant objects to the content of paragraphs five through eighteen as “misstatements of facts, lies and acts of official misconduct and perjury on behalf of multiple law enforcement officers, officials and witnesses.” This is a baseless objection as the jury had an ample opportunity to review evidence, hear testimony of the witnesses, make credibility assessments, and return a verdict in a complex case in two hours. The defendant’s alternate version of the events involved in this case was contrary to the testimony of witnesses, physical exhibits, audio recordings of the defendant and all other physical and forms of evidence.

2. The defendant objects to the two level upward adjustment for Obstruction of Justice. U.S.S.G. § 3C1.1 provides:

> If (1) the defendant willfully obstructed or impeded, or

> attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentence of the instant offense of conviction and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

This enhancement is applicable to the defendant based on his conduct prior, during and after the trial. The defendant's pretrial obstruction started on September 13, 2016 when the defendant directed that his son Keon call victims K.O. and R.W. ascertain if they were going to come to court and testify as well as instructing his son that he (Parks) needed to talk to the girls.

The defendant's post-trial behavior also merits an obstruction enhancement. This also involves attempts to contact victims. On February 16, 2017, Parks called one of his sons and asked him if he saw the letter he sent to one of the victims. On February 22, 2017, the defendant called a female known as "Hollywood" and requested that she call one of the "girls" and get her to write a letter saying that when she was underage he "didn't make her do anything". On February 28, 2017, Parks also engaged in a call with his son where he asked his son to Google "Voice Distorter" and send Parks the application details on how to make a voice sound like a girl or a kid.

The defendant also addressed a letter to Kyra Jones. In it, he stated:

> 3 maybe 4 of the girls that testified at my trial was in that program. . . was in part of Dayton. I was wondering if you could ask her if she know any of these girls or if she is Facebook Friends with any of them. If she is I want her to Facebook them and see if

> she can get them to admit that they lied at my trial I'm not trying to get her to scare them or make them feel like they could be in some kind of harm, just fine out if the prosecutor asked or made them lie about anything or if they rehearse and practice what she told the jury.
>
> Tell . . . to do this if she know any of the girls Facebook them and say I heard you got into some trouble down in St. Louis with some man. If they answer back, have her tell them that she is in the same situation with a guy out of New York and the police kept calling to make her tell on the guy. . . make her believe she need her advice and get her to say what she went through down here in St. Louis. If just one of them admit that the prosecution had them lie I am sure I could use it to my benefit at my sentencing hearing. Tell. . . not to let them know she is my step daughter until and if they say they was made to lie.

At the conclusion of that correspondence, the defendant identified all four of the minor victims. In another letter to Treycia Brown, the defendant again communicated the identities of the four minor victims to Treycia Brown along with a small portion of the defendant's criminal discovery. The defendant also sent a small portion of his criminal discovery to Misty Trowbridge.

The Application notes to U.S.S.G. § 3C1.1 provides a non-exhaustive list of covered conduct, including 4(A) - threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly or attempting to do so.

The defendant's pattern of conduct was focused upon finding, locating, communicating, manipulating and controlling minor and adult victims in this case. There was no need for the defendant to engage in such chicanery. At all times, the defendant was represented by competent counsel, who if the defendant had requested, could have and would have communicated with these witnesses or victims if the defendant truly sought to have them interviewed as part of his case. The only purpose of the defendant's conduct was to intimidate the victims and obstruct this case.

Further, the defendant's testimony at trial amounted to nothing more than perjury. In essence he claimed that he did nothing more than buy these young women meals and give them a ride. He claimed that he was wholly unaware of any of the girls engaging prostitution. His perjured testimony was contrary to witness testimony and forensic evidence. More importantly his testimony was contrary to his own words contained in texts, taped phone calls and letters. His perjury even extended to his claim that he had not been in trouble since 1992, a claim repudiated by the contents of his Pre-Sentence Report.

Perjury, in terms of obstruction has been defined as when "A defendant commits perjury if, under oath, he gives false testimony concerning a material matter with the willful intent to provide false testimony rather then as a result of confusion, mistake, or faulty memory". *United States v. Adejumo*, 772 F3.d 513, 535 (8th Cir. 2014 (quoting *United States v. O'Dell*, 204 F3.d829, 836 (8th Cir. 2000). In light of the defendant's testimony this enhancement is appropriate.

3. The defendant objects to a series of enhancements under U.S.S.G. § 2G1.3. The first is § 2G1.3(b)(3) which provides:

> If the offense involved the use of a computer or an interactive

> computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor, increase by 2 levels.

The evidence presented at trial through all four minor victims, was that the defendant either directed them to post advertisements on Backpage.com, assisted them in posting their advertisements or posted the advertisement himself. One of the advertisements was posted on Backpages.com through the defendant's account tied to xxxrec@gmail.com. Therefore, the enhancements under 2G1.3(b)(3) apply. All of these advertisements were posted with the express intent of soliciting men to have sex with the minor victims.

The second objectionable enhancement is § 2G1.3(b)(2) which provides:

> If …(B) a participant otherwise unduly influenced a minor to engage in to engage in prohibited sexual conduct, increase by 2 levels.

At the time of this offense, the defendant was 53 years old, more than 35 years older than the oldest minor victim. The four minor victims ranged between 15 and 16 years of age.

Application Note 3(B) provides in part:

> The voluntariness of the minor's behavior may be compromised without the prohibited sexual conduct occurring.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption that subsection (b)(2)(b) applies. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

In this case, the defendant took advantage of four minor runaways who bounced between living on the streets and living in institutions. He provided them with marijuana and fast food and bought some of them with clothes or "outfits". In doing so, he offered them an opportunity to go to Texas or Florida. Combined with the 35 year or more age gap, it is readily apparent that he unduly influenced the minor victims.

The defendant contends that there was double counting in applying this enhancement because the prohibited sexual conduct was an actual element of the offense. This argument has been rejected in *United States v. Hornbuckle,* 784 F3.d 549, 554 (9th Cir. 2015) and *United States v. Willoughby*, 742 F3.d 229, 241(6th Cir. 2013), as the actual commission of a sex act is not required nor is it an element of Title 18, United States Code § 1591.

4. The defendant's next objection concerns U.S.S.G. § 2G1.3(b)(4) which provides that:

If (A) the offense involved the commission of a sex act or sexual contact; or (B) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by 2 levels.

The defendant bases this on his claim that "he never engaged in sexual contact with any of the alleged victims". Whether he engaged in any sexual contact with the victims is irrelevant. In the context of Title 18 Section 1591, if a victim engages in sexual contact with anyone, it applies. The term sex act or sexual contact, as referred to in 2G1.3(b)(4) and Application note 1 refers to Title 18, United States Code § 2246(2) for definitional purposes. Section 2246 does not specify that the act or contact be with the defendant.

In *United States v. Hornbuckle*, 784 F3.d 549, 554 (9th Cir. 2015), the court (in the context of a double counting analysis applied the enhancement where victims engaged in sex with clients.

WHEREFORE, having responded to the defendant's objections, the government respectfully requests that they be denied.

Respectfully submitted,

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s/Howard J. Marcus
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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

s/Howard J. Marcus
HOWARD J. MARCUS, 29756MO
Assistant United States Attorney